

# **MINUTES OF THE REGULAR MEETING OF THE BUTTE-SILVER BOW COUNCIL OF COMMISSIONERS**

**For November 2, 2011**

**The Regular Meeting of the Council of Commissioners was called to order Wednesday, November 2, 2011, in the Council Chambers, Third Floor, Room 312, Courthouse Building, 155 West Granite Street, Butte, Montana by the Chief Executive, Paul Babb.**

## **ROLL CALL**

12 present, 0 absent.

## **PRAYER**

Commissioner Hall led the Commissioners in prayer.

## **APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF OCTOBER 19, 2011.**

**It was moved by Commissioner Palmer and seconded by Commissioner Shaw to approve the minutes of the Regular Meeting of October 19, 2011. The motion carried with a unanimous verbal vote.**

## **ITEMS NOT ADDRESSED ON THE AGENDA**

None

## **PUBLIC COMMENT ON ANY PUBLIC MATTER NOT ON THE AGENDA**

None

## **CHIEF EXECUTIVE'S REPORT**

Chief Executive Babb reported the following:

- An email, in response to Commissioner Foley's questions regarding the Social Security Referendum, was sent out November 1, 2011.
- A reply to the questions which were compiled into fact sheets is expected from Eric Nylund with Senator Tester's office by the end of the week.
- Meetings will be scheduled by the County Attorney's Office with Council members after the fact sheets are returned.
- Meghann Butler, State of Montana Social Security Administrator, is scheduled to make a presentation regarding the effective date for the Social Security Section 218 Agreement at the November 9, 2011 Committee of the Whole Meeting.
- The Social Security Section 218 Referendum vote will be held December 15, 2011.
- The Council of Commissioners will set the effective date before employees vote on December 15, 2011.
- All paving projects will be wrapped up this week.

- The Veteran's Day Celebration will be held at Stodden Park on November 11, 2011 at 10:00 a.m.

Chief Executive Babb announced the following change in the Agenda order:

1. Section IV, Communications to Be Read and Acted Upon, Communication No. 11-644.
2. Section I, Public Hearing, Communication No. 11-611.
3. Section II, Public Hearing, Communication No. 11-612 will be cancelled due to lack of proposals.
4. Section IV, Communications to Be Read and Acted Upon, Communication No. 11-653.
5. Section III, Consent Agenda.
6. Section IV, Communications to Be Read and Acted Upon, Communication Nos. 11-651, 11-621 and 11-547.

## **SECTION IV                      COMMUNICATIONS TO BE READ AND ACTED UPON**

[11-644](#)                      Chief Executive Paul Babb, requesting Council's concurrence in the appointment of Mr. Brandt Bristol as a probationary Entry Level Firefighter.

**It was moved by Commissioner Palmer, seconded by Commissioner Shaw and passed with a unanimous verbal vote to concur with the request of Communication No. 11-644 and appoint Mr. Brandt Bristol as a probationary Entry Level Firefighter.**

Jeff Miller, Director, Butte-Silver Bow Fire Services, congratulated Brandt Bristol and stated Mr. Bristol placed first in the Firefighters entry level selection process.

Chief Executive Babb also congratulated Mr. Bristol on his appointment.

## **SECTION I    PUBLIC HEARING**

**TO HEAR PUBLIC COMMENT ON REDEVELOPMENT PROPOSALS FOR 36 W. CENTER STREET, WALKERVILLE, MONTANA. (Communication No. 11-611 being held in the Committee of the Whole). Proof of Publication was noted.**

Dori Skrukrud, Butte-Silver Bow Community Development Coordinator, gave the following staff report:

- The Request for Proposals for 36 W. Center Street was issued September 26, 2011.
- Two applications for redevelopment of the property were received.
  1. Richard Ogan and Josh Hoar
  2. Raul and Shirley Samaniego
- The purpose of the Public Hearing is to take public testimony associated with the sale of publically-owned property.
- Butte-Silver Bow has owned the property for approximately one year.
- The property was offered for \$2,500.

Chief Executive Babb opened the Public Hearing at 7:43 p.m. and called for proponents.

Belle Kortum–Ingram, 15 E. Woolman, stated her support of Raul and Shirley Samaniego. Josh Hoar, 219 Nassau, explained he is a bidder for the property and if successful, will use the property for his family to live in.

William Luseberg, 108 E. Center, stated his support for Raul Samaniego.

Monica Poole Lillblad, 2120 Roberts, stated her support for Josh Hoar and Richard Ogan.

Chief Executive Babb called for opponents.

On the third and final call, there being none, Chief Executive Babb closed the Public Hearing at 7:50 p.m.

## **SECTION II PUBLIC HEARING**

**TO HEAR PUBLIC COMMENT ON REDEVELOPMENT PROPOSALS FOR 328 E. BROADWAY STREET, WALKERVILLE, MONTANA. (Communication No. 11-612 being held in the Committee of the Whole).**

No proposals were received for redevelopment of 328 E. Broadway.

## **SECTION IV COMMUNICATIONS TO BE READ AND ACTED UPON**

11-653 Dan Powers, Assistant Health Officer, Butte-Silver Bow Health Department, requesting time on the November 2, 2011 agenda for a presentation regarding Butte-Silver Bow exceeding PM-2.5 Standards.

Dan Powers explained Butte-Silver Bow has violated the current National Ambient Air Quality Standards (NAAQS), which are known as PM-2.5, and introduced Mr. Bob Habeck, Department of Environmental Quality Air Program Manager, to address Council concerning the issue.

Bob Habeck, stated he has three goals:

1. Awareness
2. Encouragement
3. Listen and learn

Mr. Habeck distributed a briefing paper to Council and made the following highlights:

- Butte-Silver Bow has had air pollution challenges for many years.
- Butte-Silver Bow Health Department has always met these challenges.
- In 1990, Butte-Silver Bow requested authority for an Air Quality Program from the State of Montana Board of Environmental Health.
- The EPA's current National Ambient Air Quality Standard (NAAQS) is PM-2.5, which is particulate matter with an aerodynamic diameter equal to or less than 2.5 microns.
- Butte-Silver Bow has violated the PM-2.5 NAAQS for the 2008-2010 time period.
- There is an obligation to act. Bad air effects public health.
- The Federal Clean Air Act (CAA) directs EPA to establish air pollution standards to protect public health and welfare.

- The CAA also requires states to submit air pollution control plans that demonstrate how communities will meet air pollution standards within specified timeframes.
- DEQ contracted with the University of Montana for special chemical mass balance (CMB) studies to identify the sources of fine particulate matter.
- A CMB study was conducted in Butte from November 8, 2007 through March 1, 2008, which showed residential wood stove burning to be responsible for 77% of the air pollution.
- The administrative process for acknowledging the air pollution violation may unfold in one of two directions:
  1. DEQ will contact the governor with the results of the monitoring data, at which time the governor will submit a request to EPA to re-designate Silver Bow County from attainment to nonattainment (not attaining the federal air quality standards), and upon approval, a compliance clock starts for developing an air pollution control plan.
  2. EPA contacts the State of Montana (via the governor) and declares Silver Bow County as nonattainment and following a 120-day fact-finding period, the compliance clock and requirement to develop an air pollution control plan would start. To date neither Montana nor EPA has initiated the re-designation process.
- Once the nonattainment compliance clock starts, Butte-Silver Bow has eighteen months to develop an air pollution control plan.
- After the plan is submitted to EPA, EPA has eighteen months to review and approve or deny the plan.
- There are several consequences of not meeting the requirements for attaining and maintaining air pollution standards:
  1. EPA may withhold federal funds for highway construction projects.
  2. New industrial sources may have to apply air pollution emissions offsets in a 2:1 ratio as part of the initial permitting process.
  3. EPA may withhold grant funding in support of state air pollution control programs.
  4. EPA may adopt and implement a federal implementation plan (FIP).
- DEQ is working with the Butte-Silver Bow Health Department to revise existing air pollution control rules to address solid fuel burning devices (woodstoves), road dust, and outdoor burning.
- Butte-Silver Bow needs state and local approval to implement these regulations and to begin a mandatory episodic air pollution alert system.
- DEQ is working with the Butte-Silver Bow Health Department to enhance communications to the public as part of the episodic control strategy.
- DEQ has an annual contract with Butte-Silver Bow in support of the local air pollution control program. However, this annual grant (approximately \$40,000) does not provide the County with adequate revenue to address this new challenge.
- An additional full-time employee is suggested to implement a robust local air pollution control program.
- Legislative “One Time Only” funding will be pursued, and partnerships with the Low Income Energy Assistance Program (LIEAP) and national grants are also being pursued.

Commissioner Schultz asked Mr. Habeck to explain the meaning of SO<sub>4</sub>, NH<sub>4</sub> and NO<sub>3</sub>.

Mr. Habeck explained NO<sub>3</sub> is nitrate, NH<sub>4</sub> is ammonia and SO<sub>4</sub> is sulfate and stated these are products of combustion.

Commissioner Schultz stated he lives in the Greeley area and explained in the summer, when there is no wood-burning problem, a coating of dirt appears only a few hours after washing his car. Mr. Schultz asked if the mining industry contributes to the air pollution problems in Butte.

Mr. Habeck replied sand particles and diesel contribute a percentage to the air pollution issues in the community.

Commissioner Andersen asked Mr. Habeck how often air samples are taken and analyzed.

Mr. Habeck replied the air quality monitors run every day, 24 hours per day.

Commissioner Andersen asked Mr. Habeck to explain how the studies are put together.

Mr. Habeck replied the samples are taken 365 days per year and are then averaged.

Commissioner Andersen asked if the Harrison Avenue Project had an impact on the air quality.

Mr. Habeck replied, in his opinion, the Harrison Avenue Project had a minor impact on the overall air quality.

Commissioner Schultz asked how many years of data have been compiled.

Mr. Habeck replied air quality monitors have been running in Butte since 1980.

Commissioner Shaw asked Mr. Habeck how long Butte-Silver Bow has to develop a control plan.

Mr. Habeck explained Butte-Silver Bow has 18 months to develop a plan, and the EPA then has 18 months to approve the plan.

Commissioner Foley commented it is obvious that Butte-Silver Bow has a wood smoke problem, but explained the community is relatively poor, with more and more people using wood as a heating source. Commissioner Foley further commented the air pollution problem is a serious issue which needs to be addressed.

Commissioner Palmer asked Mr. Habeck if highway funds have been withheld anywhere in the State of Montana.

Mr. Habeck explained funds have never been withheld in Montana, but stated East Helena came close.

Commissioner Schultz asked Mr. Habeck if there is any permitting for wood-burning stoves.

Mr. Habeck replied there are currently no permitting requirements, but stated there could be a permit system in the future.

**It was moved by Commissioner Palmer, seconded by Commissioner Shaw and passed by a unanimous verbal vote to note the concerns addressed and place Communication No. 11-653 on file.**

### SECTION III

### CONSENT AGENDA

- A. 1. COMMITTEE OF THE WHOLE MEETING REPORT
  - 2. FINANCE AND BUDGET COMMITTEE MEETING REPORT
  - 3. JUDICIARY COMMITTEE MEETING REPORT
  - 4. PUBLIC WORKS COMMITTEE MEETING REPORT
- B. COMMUNICATIONS

**Before entertaining a motion for approval of the Consent Agenda, Chief Executive Babb called for any friendly amendments or segregations.**

**It was then moved by Commissioner Palmer, seconded by Commissioner Shaw and carried with a unanimous verbal vote to approve the Consent Agenda, Section A, Items 1 through 4 and B, 1 through 36.**

### SECTION IV

### COMMUNICATIONS TO BE READ AND ACTED UPON

- [11-651](#) Mark Reavis, Butte Urban Safari Tours, requesting full disclosure of all communications and public records in regards to the Greek Café and the Brinks Building.

Chief Executive Babb stated Mr. Reavis has the ability to pursue his requests through a lawsuit or through the Freedom of Information Act.

County Attorney Joyce explained the agendas and minutes being requested by Mr. Reavis are available online, and any tapes of Council Meetings are available in the Clerk and Recorder's Office. Ms. Joyce further stated Mr. Reavis can contact the URA to obtain copies of their public agendas and minutes. Requests for emails and notes or phone logs, which are not required to be kept as part of public records, can be requested as part of discovery in the pending lawsuit.

**It was moved by Commissioner Palmer and seconded by Commissioner Shaw to note Communication No. 11-651 and place on file.**

Commissioner Foley requested a letter be prepared and sent to Mr. Reavis explaining the process for obtaining the requested documents.

County Attorney Joyce replied she would prepare a letter of explanation and send it to Mr. Reavis.

**The motion passed with a unanimous verbal vote.**

- [11-665](#) Mike Sheehy, P.O. Box 9991, Butte, Montana, requesting Council schedule public hearings to collect comments, ideas and concepts for the vacant lot at 88 East Park Street, the former location of the Greek Café.

Commissioner Palmer explained the proper process for public hearings is to have a proposal prior to a public hearing being scheduled. Commissioner Palmer further explained the Land Sales Committee should be consulted before any hearings are held.

**It was moved by Commissioner Palmer and seconded by Commissioner Shaw to refer Communication No. 11-665 to the Land Sales Committee.**

Commissioner Schultz stated the voices of the community should be heard before the Land Sales Committee makes a recommendation.

Chief Executive Babb stated Butte-Silver Bow currently has a process in place through the Community Development which has been successful.

Commissioner Foley commented Mr. Sheehy, a former Commissioner, is well aware of the proper process and has the ability to contact Council members at any time with his concerns and requests.

**The motion passed with a verbal vote of 11 yea and 1 nay, with Commissioner Schultz voting nay.**

Commissioner Palmer requested Communication No. 11-621 be acted on before Communication No. 11-547.

[11-621](#) Sheryl Ralph, District 2 Commissioner, Butte-Silver Bow Council of Commissioners, requesting Council's authorization to terminate the Memorandum of Understanding with the Butte Events Team (BET) and to draft a new agreement.

Commissioner Ralph explained a meeting with members of the Butte Events Team and 6 Council members was held Monday night. Three recommendations have been suggested outside of termination of the Memorandum of Understanding, and a new Communication asking for amendments will be submitted to Council.

**It was moved by Commissioner Ralph, seconded by Commissioner Palmer and passed by a unanimous verbal vote to note and place Communication No. 11-621 on file.**

[11-547](#) Tom Staples, President, Mainstreet Uptown Butte Board of Directors, requesting Council's authorization for the Chief Executive to sign an Operating Agreement with Mainstreet Uptown Butte.

**It was moved by Commissioner Palmer, seconded by Commissioner Shaw and passed by a unanimous verbal vote to concur with the request of Communication No. 11-547 and place on file.**

**SECTION V**

**ORDINANCES AND RESOLUTIONS –  
REFERRED TO JUDICIARY**

**1. COUNCIL RESOLUTION NO. [11-73](#)**

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE FINAL PLAT OF THE MINOR SUBDIVISION OF TRACT 4B1 OF COS 930B-RB – EXPEDITED REVIEW OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HEREWITH AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

**2. COUNCIL RESOLUTION NO. [11-74](#)**

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE FINAL PLAT OF THE AMENDED PLAT OF LOT E OF PLAT 148A OF THE BUTTE INDUSTRIAL PARK ADDITION OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HEREWITH AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

**SECTION VI**

**ORDINANCES  
SECOND READING**

**COUNCIL BILL NO. [11-7](#)  
ORDINANCE NO. 11-7**

AN ORDINANCE AMENDING BUTTE-SILVER BOW ORDINANCE NO. 277 AND CHAPTER 10.52 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) ENTITLED “PARKING”; AMENDING SECTION 10.52.1030 ENTITLED “MONTANA TECH RESIDENTIAL PARKING PROGRAM” AND DELETING REFERENCE TO FEES AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. *It was moved by Commissioner Palmer and seconded by Commissioner Shaw that Council Bill No. 11-7, Ordinance No. 11-7 be placed on second reading and be passed having been deemed read at length. The motion passed with a roll call vote of 12 yea and 0 nay.*

**SECTION VII**

**ORDINANCES AND RESOLUTIONS  
FINAL READING**

**1. COUNCIL BILL NO. [11-10](#)  
ORDINANCE NO. 11-10**

AN ORDINANCE AMENDING SECTION 2 OF BUTTE-SILVER BOW ORDINANCE NO. 134 AND SECTION 2.04.010 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC); ADJUSTING THE ANNUAL SALARIES OF THE CHIEF EXECUTIVE, COUNTY ATTORNEY, SHERIFF, CLERK AND RECORDER, TREASURER, ASSESSOR, CITY JUDGE, JUSTICE OF THE PEACE, AUDITOR, SUPERINTENDENT OF SCHOOLS, CLERK OF THE DISTRICT

**COURT, CORONER AND MEMBERS OF THE COUNCIL OF COMMISSIONERS AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. *It was moved by Commissioner Palmer and seconded by Commissioner Shaw that Council Bill No. 11-10, Ordinance No. 11-10 be placed on final reading and be passed, having been deemed read at length. The motion passed with a roll call vote of 9 yea and 3 nay.***

2. **COUNCIL BILL NO. [11-11](#)  
ORDINANCE NO. 11-11**

**AN ORDINANCE AMENDING BUTTE-SILVER BOW ORDINANCE NO. 354 AND CHAPTER 2.76 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) ENTITLED “FRIENDS OF THE URBAN FOREST BOARD”; AMENDING SECTION 2.76.050 ENTITLED “ESTABLISHMENT” AND SECTION 2.76.060 ENTITLED “APPOINTMENT-TERM-VACANCY” AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. *It was moved by Commissioner Palmer and seconded by Commissioner Shaw that Council Bill No. 11-11, Ordinance No. 11-11 be placed on final reading and be passed, having been deemed read at length. The motion passed with a roll call vote of 12 yea and 0 nay.***

2. **COUNCIL RESOLUTION NO. [11-71](#)**

**RESOLUTION RELATING TO \$4,860,000 WATER SYSTEM REVENUE BONDS (DNRC DRINKING WATER STATE REVOLVING LOAN PROGRAM), CONSISTING OF \$500,000 SUBORDINATE LIEN TAXABLE SERIES 2011A BOND AND \$4,360,000 SUBORDINATE TO NET REVENUE LIEN SERIES 2011B BOND; AUTHORIZING THE ISSUANCE AND FIXING THE TERMS AND CONDITIONS THEREOF; AND PROVIDING FOR THE SERIES 2011B BOND TO CONVERT FROM A SUBORDINATE LIEN BOND TO A BOND HAVING A FIRST LIEN ON THE NET REVENUES IN THE FUTURE. *It was moved by Commissioner Palmer and second by Commissioner Shaw that Council Resolution No. 11-66 be placed on final reading and be passed, having been deemed read at length. The motion passed with a roll call vote of 12 yea and 0 nay.***

**ADJOURN**

**It was moved by Commissioner Palmer, seconded by Commissioner Shaw and carried with a unanimous verbal vote to Rise to the Call of the Chair.**

The meeting adjourned at 8:40 p.m.

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**CHIEF EXECUTIVE**

**ATTEST:**

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**CLERK AND RECORDER**